

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

JCP, LC, Petitioners-Appellants, v. Warren County Board of Review, Respondent-Appellee.	ORDER Docket No. 11-91-0285 Parcel No. 64-025-10-0267
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On July 18, 2012, the above captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board under Iowa Code sections 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant JCP, LLC was represented by David Kutcher. County Attorney John Criswell is legal counsel for the Warren County Board of Review. The Board of Review did not participate at the hearing and chose to stand on the certified record. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

JCP, LLC, is the owner of an agriculturally classified property located in Warren County. The site is legally described as the NE SE Ex N 165 feet and Except Parcels B and C and Except E 333 feet S 350 feet. The parcel number for the subject site is 64-025-10-0824. It has no street address. The property was recently annexed from Linn township into the city of Norwalk. JCP appeals from the Warren County Board of Review decision regarding its 2011 property assessment. The January 1, 2011, assessment is \$19,900.

According to the property record card, the subject site is 21.680 acres and is unimproved.

JCP protested to the Board of Review asserting an error in the assessment under Iowa Code section 441.37(1)(c). On its appeal form it noted “all other parcels in section, township, range, 10-77-25 had zero increases...this is only parcel with an increase.” Essentially, we find that JCP was

asserting that its property is assessed for more than authorized by law under section 441.37(1)(b). The Board of Review denied the protest.

JCP then appealed to this Board with the same claim.

The property record card identifies the subject property as parcel number 64-025-10-0824; it appears to include the entire 21.680 acre property in this one parcel. According to notes on the property record card, and testimony from David Kutscher on behalf of JCP, the subject site was annexed from Linn Township into Norwalk in 2008 with a ten-year phase-in. The total assessed value to the subject site is \$19,900. In April 2011, JCP received notice of its assessment. However, there were two notices for the subject site, each purportedly representing a portion of the total 21.680. Both notices reflect the same legal description and “alternate parcel number,” which is 15000100824, but then the notices list a separate “parcel number.” One notice has a parcel number of 64-025-10-0824 and the second notice has a parcel number of 85-025-10-0824. The notice of assessed value for parcel 64-025-10-0824 was for \$8600, representing 21.680 acres. The notice of assessed value for parcel number 85-025-10-0824 was for \$11,300, representing 0.00 acres. The total for the two notices is \$19,900 and 21.680 acres of real property.

A July 2012, letter from Warren County Assessor Brian Arnold stated “this particular parcel in Warren County is located in an annexed area of the City of Norwalk so the total assessed value is divided between two real estate parcels based on a predetermined annexation phase-in schedule.” Despite this statement by the assessor, we find no legal basis upon which an assessor may divide the subject parcel for property tax purposes and send separate assessment rolls assigning fictitious “sub-parcel” numbers to allocate assessed value between taxing jurisdictions. Moreover, this action would appear to be contrary to law. *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878 (Iowa 1989) (finding an assessor may not subdivide historic legal descriptions of properties for purpose of separately assessing individual portions thereof); *see also* Iowa Code § 428.7.

Considering the two allocations, Arnold also stated “the original assessment notices were sent out with the value of \$8600 and \$11,300 (total \$19,900). These amounts are being corrected to \$9500 and \$10,400 (total \$19,900.) The value of parcel 85-025-10-0824 should have remained unchanged from the 2010 assessment figure.” We are unclear whether these corrections have already been made or will be made in a future assessment. We note the assessor has no legal authority to make a change/correction in the assessment after April 15.

At hearing, Kutcher testified the concern was specifically with the \$11,300 allocation to 85-025-10-0824. While he believes a correction of this amount to \$10,400 is reasonable, he questions an increase in the sister-parcel from \$8600 to \$9500. However, he also testified that it was his belief that the total value of \$19,900 for the subject site was correct. We note, again, that it would appear the law requires only one assessment and one parcel number for the subject property, not a fictitious allocation for taxing purposes. Regarding the actual assessed value, Iowa Code section 441.21(1)(e) provides that agricultural real estate be assessed at its actual value by giving exclusive consideration to its productivity and net earning capacity. In determining the productivity and net earning capacity of agricultural real estate, the assessor is required to use available data from Iowa State University, the Iowa crop and livestock reporting service, the Department of Revenue, the *Iowa Real Property Manual*, and to consider the results of a modern soil survey, if completed. Iowa Code § 441.21(1)(f); Iowa Administrative Code r. 701-71.3. JCP’s parcel carries an agricultural classification, which requires that it is valued using the agricultural formula method. *See* Iowa Admin. Code r. 701-71.3, 701-71.12.

Despite the irregularities in the assessment, we find there is insufficient evidence to indicate the subject property is assessed for more than authorized by law.

Conclusions of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).


In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

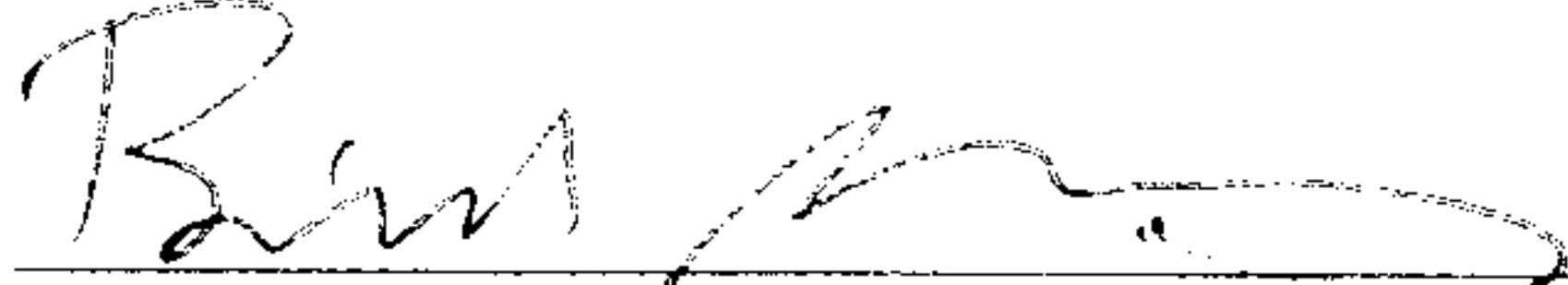
JCP's parcel carries an agricultural classification, which requires that it be valued using the prescribed productivity formula despite the fact that it is not actually producing an agricultural product.

See Iowa Admin. Code r. 701-71.3, 701-71.12. They did not provide evidence to support of the productivity and net earning capacity to show the property was over assessed, and we, therefore, affirm its assessment.

THE APPEAL BOARD ORDERS the assessment of JCP, LLC's property identified on the property record card as parcel number 64-025-10-0824, of \$19,900, as of January 1, 2011, set by the Warren County Board of Review, is affirmed.

Dated this 13 day of September, 2012.


Karen Oberman, Presiding Officer


Richard Stradley, Board Chair


Jacqueline Rypma, Board Member

Cc:

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>9-12</u> , 2012	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature:	